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Natural Resources Committee
February 27, 2009

[LB502 LB504]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 27, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on confirmations, LB502, and LB504. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: None. []

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. My name is Chris Langemeier, I'm the Chairman of the committee. I'd like to start off by thanking everybody that's here in the audience and those that are watching on close-captioned television and those that are watching our live feed on the Internet. I'd like to introduce the committee members and the people around the table here today. I have Senator Barb Koehlmoos to my far right....I upgraded her, Barb Koehlmoos the committee clerk; the next person is Senator Tanya Cook from Omaha, District 13; Senator Tom Carlson from Holdrege, District 38; Senator Fischer will be here later; to my far left we'll have some members joining us later as they're introducing bills in other committees but we have Senator Ken Haar from northern Lincoln, southern Saunders County with us; we have Laurie Lage, the legal counsel, committee counsel for the committee; we have two pages that will be helping us today, we have Justin Escamilla from Scottsbluff, Nebraska; and Melinda Frevert from Omaha, Nebraska, will help you hand out things if you need to. At this time we'd ask you to turn your cell phones off as we proceed with the hearings. If you care to testify today on any of the bills, we'd ask that in the corner of the rooms are these green sheets that you would fill them out in their entirety and then hand them to the committee clerk when you come up to testify. If you're here in the audience and you'd like to go on record of being in support or opposition to a bill, there's also these sheets in the corner that you can sign your name and address to and you'll be part of the record if you don't choose to come up and testify today. When you come up to testify we ask that you state and spell your first and last name, no matter how simple as it seems. We need to keep a good, clean record so we ask that you spell it. With that, we're going to move on. We have a confirmation report to the Environmental Trust. Mr. Robert Krohn is on the phone with us and you're going to do this via teleconference and so welcome to the committee, Mr. Krohn. Go ahead. []

ROBERT KROHN: (Exhibit 1) Okay. Thank you, Mr. Chairman, I'm Robert, R-o-b-e-r-t, Krohn, K-r-o-h-n. And from Omaha, Nebraska, in Senator Ashford's District. And this would be a reappointment to the Environmental Trust Board. I live at 1427 South 85th Avenue in Omaha, 68124. [CONFIRMATION]

SENATOR LANGEMEIER: Very good. Are there any questions from the Committee? Senator Carlson has a question. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

SENATOR CARLSON: Senator Langemeier. Mr. Krohn, in your time on the Environmental Trust, what do you feel is maybe the biggest challenge and on the other hand the biggest contribution that the Environmental Trust Board has made? [CONFIRMATION]

ROBERT KROHN: Well, I guess the, you know, I guess the main concern and first of all my background is on a farm in Albion, Nebraska, and civil engineer and I worked for the Public Health Department for the state of Nebraska and went to 230 communities when I worked in that position. So I think I know the state pretty well and I served on the Water Management Board for the Legislature during the '80s when that study was made. And there's really been a lot of improvements. I guess one of my concerns in watching the state has been the great increase in invasive species throughout the state. And, you know, I guess the most public attention is on the cedars and the phragmites, but it has really become a major problem. I know the Trust has spent a considerable amount of money on those efforts and I guess one of the problems is how do you get them to be long term? And in that regard, I think it's really imperative that we somehow reengage landowners on their responsibilities to take care of those lands. And when I was a small child, the first thing I learned to do on the farm was to go out and chop weeds that we considered noxious weeds, but the invasive species we're talking about now are even worse. [CONFIRMATION]

SENATOR CARLSON: Thank you for your answer. And this is Tom Carlson, and I'm the one who asked you the first question. And appreciate your efforts to invasive species and we don't want to leave out salt cedar and Russian olive either. Appreciate your answer, thank you. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you, are there any other questions? They're going to let you off easy. [CONFIRMATION]

ROBERT KROHN: I guess so. And I appreciate you doing this by phone. Sorry I'm not there. [CONFIRMATION]

SENATOR LANGEMEIER: I do have one more, Senator Cook would like to ask you a question. [CONFIRMATION]

SENATOR COOK: Thank you, Senator Langemeier. Sir, I just have one question before we make any decisions on your appointment. What is the temperature today in Phoenix? [CONFIRMATION]

ROBERT KROHN: Well, it's a very pleasant 70 degrees right now. [CONFIRMATION]

SENATOR COOK: All right. Thank you very much. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

SENATOR CARLSON: A follow up question to that, are you going to play golf today?
[CONFIRMATION]

ROBERT KROHN: No, no. Not today. I have a meeting starting in about 30 minutes.
[CONFIRMATION]

SENATOR COOK: Thank you. [CONFIRMATION]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for allowing yourself available for the teleconference and we appreciate it. [CONFIRMATION]

ROBERT KROHN: Okay, thank you. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you. If it had been too nice, we won't confirm, is that it? [CONFIRMATION]

SENATOR COOK: Yes. (Laughter) He's not playing golf so that helps.
[CONFIRMATION]

SENATOR LANGEMEIER: That concludes the hearing...Oh, excuse me, that was the introduction. Is there anyone that would like to testify in support of Mr. Krohn's appointment? Would there be...come on up. Welcome, Senator Schmit.
[CONFIRMATION]

LORAN SCHMIT: Thank you, Chairman Langemeier. I'd just like to go on the record, my name's Loran Schmit from Bellwood, Nebraska. L-o-r-a-n S-c-h-m-i-t. And I've been a longtime friend of Mr. Krohn, and I've watched on his work on the Trust and I can concur that he will do a good job again. And I'm surprised the Chairman didn't convene the committee in Phoenix today, and could have met with Mr. Krohn in person. But I just again want to reiterate what I've said before. Thank you very much. [CONFIRMATION]

SENATOR LANGEMEIER: Thank you very much. Snuck up on me otherwise. Are there any questions? Seeing none, thank you. Is there any other testimony in support? Is there any testimony in opposition? Is there any testimony in a neutral capacity? Seeing none, that will conclude the hearing on Mr. Krohn's appointment to the Environmental Trust Board. And we'll move on now, we'll open the hearing on LB502. And those joining us, we have Senator Beau McCoy from Omaha, who's joined us; and the Vice Chair of the committee is Senator Annette Dubas, has joined us; and Senator Ken Schilz from Ogallala has joined us. And we will open the hearing on LB502.
[CONFIRMATION]

SENATOR LANGEMEIER: Chairman Dubas and members of the committee, my name is Chris, C-h-r-i-s, Langemeier, L-a-n-g-e-m-e-i-e-r, and I represent District 23 in the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

Nebraska Legislature. LB502 would allow underground storage tank owners who, starting July 1, 2009, must obtain private insurance as proof of financial responsibility for any new tank at a site where the tanks have been previously located to take a credit or refund against the amount they are paying for remedy fees and insurance expenses...didn't make sense. Federal law requires underground tank owners to provide financial responsibility to cover the cost of cleaning up a release from an underground petroleum storage tank. Since insurance companies reluctant to provide coverage, states created the Leaky Underground Storage Funds, called LUST Funds to provide coverage. Money in the Nebraska fund is generated through underground storage tank fees, .9 of 1 percent of gas and .3 of 1 percent for diesel fee is put on each gallon and goes into the LUST Fund. A few years ago there was a policy shift regarding financial responsibility and whether it should again be in the private sector. It was agreed that starting on July 1, 2009, owners of sites that have never had underground storage tanks on them would have to obtain private insurance. This issue is that these tank owners are still required to pay fees into LUST Funds and that they believe that they are required to pay fees that would be eventually to insurance premiums. This bill allows a credit which would remedy this problem. The petroleum marketers are here and they're going to testify behind us. But what you have is the new tanks going in are buying private insurance and they're also having to pay the fee in for the Fund that they could never be recipients of. And so the bill before us would be to give them a credit back so they're not in double payment of that fee. So with that, I would take questions or. [LB502]

SENATOR DUBAS: Thank you, Senator Langemeier. Questions? Senator Carlson. [LB502]

SENATOR CARLSON: Senator Dubas. I think I either misheard or it wasn't quite stated right, but it's .9 of a cent per gallon, not .9 of 1 percent of price. [LB502]

SENATOR LANGEMEIER: Nine-tenths of 1 cent on gas and .3 of 1 cent on diesel. [LB502]

SENATOR CARLSON: Okay. [LB502]

SENATOR DUBAS: Other questions? I would have one for you, Senator Langemeier. Why is it that we don't just say they don't have to pay into this fund rather than have to go through a process like granting them a credit? [LB502]

SENATOR LANGEMEIER: Well, the credit goes onto the gas. So then you'd have some gas stations that would have .9 of a cent less lower price. So if you look at the pumps where it says \$1.71 and 9, you'd have some pumps that wouldn't say that. So it'd be evenly collected across and the petroleum marketers might be able to expound on that, but I think it's just to keep it easy across all the gas stations. [LB502]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

SENATOR DUBAS: Be a lot of additional... [LB502]

SENATOR LANGEMEIER: Potentially, it could be a lot of book work. [LB502]

SENATOR DUBAS: Book work and reconfiguring things. [LB502]

SENATOR LANGEMEIER: Why are you .9 and why are you not .9? [LB502]

SENATOR DUBAS: Okay, thank you. [LB502]

SENATOR LANGEMEIER: Yeah. [LB502]

SENATOR DUBAS: Okay. Thank you. Any other questions? None, thank you. [LB502]

SENATOR LANGEMEIER: Thank you. [LB502]

SENATOR DUBAS: Proponents? [LB502]

TIM KEIGHER: Good afternoon, Senator Dubas and members of the committee. My name is Tim Keigher, that's K-e-i-g-h-e-r, and I appear before you today as a proponent of LB502 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. First of all, we'd like to thank Senator Langemeier for introducing this piece of legislation on our behalf. And I guess I did too good a job of educating him because he just read my testimony. I guess the reason that we feel that we should be allowed a credit against what we're paying into the underground storage tank fund is we look at it and say it's kind of like having a car and paying an insurance premium to Allied Insurance and paying one to Allstate, but only being able to turn a claim into Allstate and not Allied. Senator Dubas, your question about, you know, why should they have to pay into the fund at all, I guess that's a question that we raised back in 2005 when this policy change was made, and maybe someone from the department could answer that better. But I think the reason for that is, is that there are still a number of cleanups to go, and they need to generate money going into the fund, and I guess that they felt that to continue generating that money, everybody needed to continue to pay. That's the only reason I know why, you know, to keep the fund solvent and continue to work on the backlog of sites that are out there so. I guess, you know, we feel this is a fair thing. We understand, you know, it was former Senator Beutler's concerns that at some point this needed to go back to the private sector. I don't know exactly how many sites there are still to clean up but there are a fair number. We prefer to see it happen that everybody would go to private insurance at one time after all the sites were cleaned up, but this was a negotiation that was part of an extension of the eligibility date to turn in a claim back in 2005 and we feel that with LB502, it can be fair to us in that we're not going to pay anymore than what we were paying before. What we would have paid into the fund

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

less what we have to pay for private insurance. So I guess with that, I'll happy to answer any questions you may have. [LB502]

SENATOR DUBAS: Thank you, Mr. Keigher. Questions? Senator Haar. [LB502]

SENATOR HAAR: Thank you. Nine-tenths of a cent per gallon, that's a huge fund, then. Do you have any idea the size of the fund or? [LB502]

TIM KEIGHER: You know, I haven't checked the balance lately. I mean, a penny of gas tax raises about \$12 million, and then you've got the three-tenths on diesel so I don't know exactly how much is in there today. But DEQ does a very good job of, you know, trying to spend that money in an appropriate way. They came up with the risk based approach which basically says you have a site that has contamination on it. Is that contamination getting into ground water or drinking water or is it migrating off the site? And if it's not and the contamination levels are not very high, then the site will remediate itself. So I think they've done a good job in managing that pool of money. I know that they try and keep the pool of money, you know, around \$5 million just so that some other people don't borrow from it, which they have in the past. [LB502]

SENATOR DUBAS: Other questions? Senator Carlson. [LB502]

SENATOR CARLSON: Senator Dubas. Tim, is it state law that you have to carry insurance if you can get it? [LB502]

TIM KEIGHER: It's a federal law that you have to have proof of financial responsibility up to \$1 million. And basically what happened back in the late '80s when the US EPA came out with this regulation that said you had to upgrade your tanks, your piping, have forms of leak detection, spill prevention, they also put in this financial responsibility requirement. Well, the stations that have been in existence for a number of years had some form of contamination there and no insurance company would insure these sites because nobody would buy "the burning building". So the majority of the states formed leaking underground storage tank funds and have different methods of funding them. Most of them are funded through a fee of some sort on gasoline and diesel fuel. And I checked with some insurance companies. You know, on a site where tanks never were, you don't have any petroleum contamination and with all the new technology you have the premium is fairly reasonable. Anywhere from \$300 to \$500 is what I've found so far, per tank. So, yeah, the other aspect of this bill is that in procuring that insurance, one fear we have is if you're with insurance company A for a period of five years and you want to go to insurance company B, and then they require you to do a site assessment to show what contamination level is there. What I have found is that if there has been a release, they probably would require you to do some type of testing. If there hasn't been a release and you can prove that through inventory records and that they probably would not have you do a site assessment, but that's why I'm hoping that this bill will

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

cover the cost of procuring the insurance, which would be a site assessment plus any premium that you would pay. That you could take a credit of what you're paying into the underground tank fund. [LB502]

SENATOR CARLSON: Okay. Thank you. [LB502]

TIM KEIGHER: Um-hum. [LB502]

SENATOR DUBAS: Other questions? Seeing none, thank you, Mr. Keigher. [LB502]

TIM KEIGHER: Thank you. [LB502]

SENATOR DUBAS: Next proponent? [LB502]

ED WOEPPEL: Members of the committee, I'm Ed Woepfel, and that's E-d W-o-e-p-p-e-l, here today representing the Nebraska Cooperative Council. I'm sitting in for Bob Andersen, Bob was not able to be here today. The Nebraska Cooperative Council is the trade association for the farmer-owned cooperatives across the state and we enjoy membership from about 92 percent of the cooperatives in Nebraska. I believe that the issue has been laid out pretty clearly by Senator Langemeier and Mr. Keigher, so I won't spend a lot of time reapplying the same ground, but I just want to go on record of being in support of LB502 and certainly would respond to any questions that you may have. [LB502]

SENATOR DUBAS: Thank you, Mr. Woepfel. Questions? Seeing none, thank you. [LB502]

ED WOEPPEL: Pretty good. [LB502]

SENATOR DUBAS: Next proponent? Any opposition? Anyone in the neutral? Seeing none, Senator Langemeier. [LB502]

SENATOR LANGEMEIER: Let's have the next bill, I'll come up. I think it was pretty well explained so if you have questions in the future we can answer them, but I think it's pretty well explained. That would be my closing. [LB502]

SENATOR DUBAS: Thank you, Senator Langemeier. That will close the...we don't have anything to read into the record? Okay. That will close the hearing on LB502. And our next bill is LB504, is that right? Yes, LB504. [LB502]

SENATOR LANGEMEIER: The crowd is aware the snow is coming so they left early. My name is Chris Langemeier, it's C-h-r-i-s L-a-n-g-e-m-e-i-e-r. I represent the 23rd District in the Nebraska Legislature and I'm here to open on LB504. And I have a bunch

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

of prepared stuff here but I'm just going to get right to it. As each of us that have had some experience dealing with NRDs or any type of projects that go on within the state of Nebraska in relationship to water, become very quickly familiar with the Clean Water Act or 404 permits. As we prepare to build dams, dykes, dredges, whatever we prepare to do, we have to go seek a 404 permit from the Army Corps of Engineers. And over the years those permits have become tougher and tougher to get. They get more demanding on, more run around, maybe not so much per se on the questions or the challenges that are related to them, but you just get more and more run around in the process. So LB504 is a bill that would require the state of Nebraska, I shouldn't say require, it would be the state of Nebraska to self-enforce the Clean Water Act and would then require Nebraska to issue 404 permits. The state of New Jersey has done this already, it's a pretty complex process. It'd actually take a little more than just this bill to get it done. But we're here to have the discussion about the process and the obstacles within obtaining 404 permits. With that, I'm going to conclude. I think we have some good testifiers behind us that'll go into more detail and then I'll come back and close and if something doesn't get addressed that I still have in my opening, I'll submit it then. [LB504]

SENATOR DUBAS: Thank you, Senator Langemeier. Questions? Senator Haar. [LB504]

SENATOR HAAR: Thank you. Just one quick question. [LB504]

SENATOR LANGEMEIER: Um-hum. [LB504]

SENATOR HAAR: The A bill gives an expenditure of a little over \$1 million, and we'll probably get this answered, but does that come in from fees paid to us that then they would have been...it's that additional revenue or? [LB504]

SENATOR LANGEMEIER: It's an additional expense as we create...this would create a kind of an agency, per se, to administer 404 permits so it is an expenditure and this body would have to figure out how we wanted to charge back to projects to pay for it. But right now I want to focus on the procedures and the manners we get our 404 permits. And it's a big obstacle. The odds this goes forward are slim to none, I'm well aware of that, but I think we step forward in discussing what the issues are and how we can deal with that. [LB504]

SENATOR HAAR: Thank you. [LB504]

SENATOR DUBAS: Other questions? Seeing none, thank you. First proponent? [LB504]

JOHN MIYOSHI: (Exhibits 2, 3) Senator Dubas and members of the Natural Resources

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

Committee, my name is John Miyoshi, spelled J-o-h-n M-i-y-o-s-h-i. I'm the general manager of the Lower Platte North Natural Resources District located in Wahoo. And today I'm testifying in support of LB504 on behalf of my district as well as the Nebraska Association of Resources Districts. LB504 will authorize the state of Nebraska to assume administration of Section 404 of the Clean Water Act which is regulated by the U.S. Army Corps of Engineers through the administration and cooperation of the United States Environmental Protection Agency. Basically, the state will be in charge of the 404 dredge and fill permit process. The NRDs are not large users of 404 permits, however, it is very important that we receive these permits in a timely manner for the few times each of us annually use them. Several of us also assist landowners, cities, and counties in preparing 404 permit applications for small individual projects in our districts. In the past, most 404 permits were processed in two or three months. For projects that are more complicated, we would request to have an Army Corps of Engineer regulatory field person visit the site with us to make suggestions on the pending permit. Using Corps' input, we would usually depend on receiving these permits in less than three months. For larger projects such as watershed dams, a six to 12 month processing time included consultation could be depended on. This harmony has changed over the past two years. Permit approval is slow to the point of stagnation. With every permit sent in, we are repeatedly asked for more information. Individuals and units of government are frustrated to the point of not constructing the projects or finding it necessary to hire expensive engineers and lawyers. Larger projects also include cost-shared funding from outside sources. It can be expensive or even fatal to a project when timely construction is not started due to lack of a 404 permit. Remember, these projects are built for public benefit and protection. One year ago, three NRDs approach the Corps about the slow down in permit approval. This discussion escalated to a meeting with the Army Corps Commander, Colonel Press, set up by Governor Heineman. Several state agency directors and I expressed our concern to Colonel Press and his staff. Heineman has also corresponded with President Obama concerning the change in process and the limits it places on our state. A process between the Corps and the state was started and we were assured changes would occur to address our concerns. To date little has happened. We see public benefits to state administration of the 404 permit which include: improved cost effectiveness, a better understanding of Nebraska water resources and project impacts, improved communication between administrators and applicants, quicker response times, efficiency of time and cost when dealing between state agencies, the state is better equipped to provide training on the permitting process, the state can tailor the program to fit Nebraska's needs. The negative concern to the state assuming the 404 program is the cost. Unlike other programs, there is no federal cost assistance when the state assumes the 404 program. Permit fees would need to be established that would pay a reasonable amount of the program costs. However, we must remain cognizant that the real payback for this program is cost savings to the state and citizens of the state will derive from the time and cost efficiencies we all receive from a state ran 404 permit program. We all recognize that having the state manage the 404 permit program does not circumvent the federal intent

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

of the Clean Water Act, but like many other government functions, Nebraska often finds better and more efficient ways to manage important issues. It's the Nebraska way. [LB504]

SENATOR DUBAS: Thank you, Mr. Miyoshi. Questions? Senator Haar. [LB504]

SENATOR HAAR: Today if you get a 404 permit, is there a fee connected with it? [LB504]

JOHN MIYOSHI: No, there is not. [LB504]

SENATOR HAAR: Okay. Do you have any...I mean, you must have some ideas of why it's slowed down. Is it less staff or? [LB504]

JOHN MIYOSHI: I have my personal thoughts on that. [LB504]

SENATOR HAAR: Well could you share them? [LB504]

JOHN MIYOSHI: Well there was a change in personnel and a change of thought at the Omaha regulatory office. In the past, the project managers by the Corps had the authority to meet with us. What they told us we could put in the permit, and go to the bank and our permit would be approved. Today's process, even though we meet with the field representatives, it seems that all permits are funneled through the director of the regulatory program and the state and there's just a tremendous slow down on one particular desk, my personal thought. [LB504]

SENATOR DUBAS: Other questions? Senator Fischer. [LB504]

SENATOR FISCHER: Thank you, Senator Dubas. Thank you, Mr. Miyoshi, for bringing this to the attention of the committee. I agree with you and with the Governor's letter with regards to road projects, and the Nebraska Department of Roads there's been a considerable delay in projects for this very reason so thank you for bringing this to our attention in this form. [LB504]

JOHN MIYOSHI: Yes. The Nebraska Department of Roads is probably the largest user of the 404 permit process in the state. [LB504]

SENATOR DUBAS: Other questions? I would have one for you Mr. Miyoshi. I've had similar contacts from constituents in my area very frustrated with this process and I guess I know this would be conjecture on your part, but if we could give them a relatively strong assurance that we could step this process up and allow them to start moving forward on their projects, you think they'd be agreeable to supporting it financially? [LB504]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

JOHN MIYOSHI: Yes. I think that would be...time is money and whether it be money from an outside source that we have deadlines we have to use it by or in the case of the Leigh Dam where the project costs have greatly escalated since they began that permit process. It took them over two years to receive that permit. [LB504]

SENATOR DUBAS: I know. Last year with all the heavy rains, parts of my district received considerable amount of damage because of projects that they hadn't been able to move forward yet and were still waiting for that permit. So I know the level of frustration is extremely high. So if we could do something to expedite this while doing everything else that needs to be done, I think it would be greatly appreciated by all involved. So I thank you, too, for bringing this forward. Other questions? Senator Haar. [LB504]

SENATOR HAAR: Thank you. If this happens in Nebraska, would it require a new department or would it just happen under the...do you have any idea what that would look like? [LB504]

JOHN MIYOSHI: Well it would make sense to put it under DEQ,. One time it was talked in the past, and they have the field staff and the expertise for permitting. They've ran other programs. They are an environmental arm, they seem the best qualified to handle that. [LB504]

SENATOR DUBAS: Other questions? Seeing none, thank you very much. Next proponent? [LB504]

DUANE GANGWISH: Chairman Dubas, members of the committee, my name is Duane Gangwish, D-u-a-n-e G-a-n-g-w-i-s-h. I would like to go on record as supporting this proposal. We view it from the standpoint of our permitting process for livestock facilities. It's never by intent that we want or desire to interact with the Corps, but there are occasions where there are activities that once in awhile we bump into it, and so we believe that this would be a good effort and make DEQ more of a, excuse the term, but a one-stop shop for our permitting process for livestock so. With that, I'd be happy to take any questions. [LB504]

SENATOR DUBAS: Thank you, Mr. Gangwish. Questions? Senator Haar. [LB504]

SENATOR HAAR: Thank you. Since some of us are just learning, could you give me an example of how it works, you know, in terms of a farmer such as Ken here, in terms of how you get 404 permits or whatever? [LB504]

DUANE GANGWISH: No. [LB504]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

SENATOR HAAR: Okay. [LB504]

DUANE GANGWISH: I say it quite honestly that I have never attempted to do it myself so I'm not skilled at the process or familiar with the process to do it so I. [LB504]

SENATOR HAAR: Okay. Well I can ask Senator Schilz. [LB504]

SENATOR SCHILZ: I have never applied for one. [LB504]

DUANE GANGWISH: I think many people don't want to. [LB504]

SENATOR SCHILZ: Right. [LB504]

SENATOR HAAR: So in what context then would, you know, the farming community have to use 404 permits? [LB504]

DUANE GANGWISH: Well to my knowledge any time that you disturb a bed and bank then you are filling or dredging. There is, what I have had experience with and this may not be completely applicable, but you take a USGS map and anywhere there's a dashed and dotted blue line, that is a stream. And the Corps, I believe, uses that and DEQ also looks at those and some of those have come into existence based upon aerial photography from the early '50s and '60s and because of the drainage projects, because of farming practices, because of possibly road constructions, vary other things there is not drainage in those areas but they're still on record as being perennial streams or intermittent streams. So there just may be some clarification and that might be an opportunity where a producer or farmer would tend to bump into the Corps. It may not be a bed and bank but there's still that confusion area, and this would bring that jurisdiction into DEQ for that evaluation and that process. [LB504]

SENATOR HAAR: Thank you. [LB504]

DUANE GANGWISH: You're welcome. [LB504]

SENATOR DUBAS: Other questions? I see none, thank you. [LB504]

DUANE GANGWISH: Thank you. [LB504]

SENATOR DUBAS: (Exhibits 4, 5) Next proponent? Any opponents? I do need to read a couple of letters into the record in support of LB504, Mr. Ken Berney with the Lower Elkhorn NRD, and Nebraska Association of Resource Districts and Mr. Jereme Montgomery with the Nebraska Concrete and Aggregates Association. Do we have any neutral testimony? Welcome. [LB504]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
February 27, 2009

MARY HARDING: Thank you, Senator and members of the committee. My name is Mary Harding, M-a-r-y H-a-r-d-i-n-g. I am registered lobbyist and executive director of the Nebraska League of Conservation Voters. The board did not take an official position on this bill, thus I'm here in a neutral capacity. But we did want to add our experience in the past with organizations having a great deal of difficulty obtaining 404 permits from the Army Corps of Engineers in a timely fashion. I, personally, have experience working with grant projects across the state of Nebraska. Some in ranch country where ranchers were working with the Fish and Wildlife Service to develop wetlands projects and soil erosion control projects where the actual implementation of the project was deferred as much as a year, and waiting for the 404 permit. I am familiar with projects that were implemented by NRDs, funded through the Environmental Trust where the Trust actually had to extend the grant deadline. There's a three year statutory limit on grants unless the board takes action to the contrary and the board has had to take action to extend those grants simply to accommodate the delay that projects experienced due to the slowness of the 404 permit. And we simply wanted to offer this information for your consideration as you put this bill forward. [LB504]

SENATOR DUBAS: Thank you, Ms. Harding. Questions? Seeing none. Thank you. [LB504]

MARY HARDING: Thank you. [LB504]

SENATOR DUBAS: Additional neutral testimony. Seeing none, Senator Langemeier. [LB504]

SENATOR LANGEMEIER: I should have stayed on script when I started. First of all, I think I said that this would make and create an agency; that's not accurate. We believe DEQ can handle this with some additional staff and that's what the \$1 million is for. The one thing I'd liked to have seen in the fiscal note, which they didn't do, was go to the Department of Roads and say, how many times have you had ongoing letters to address the same issue over and over again? I think if you put that expenditure that we're already paying as a state for roads projects, this number may be negative. It may save us money as far as an agency. The other thing I want to go on record as saying is the goal of LB504 is not to make this process...I don't want to say simpler, we want to make it more efficient. We're not trying to get around anything that is part of a 404 permit, we're not trying to skip any steps or anything like that, we still want to comply with the Clean Water Act with projects of those streams hydrologically connected with the streams of the United States. The idea is to bring it to a state level to people you can talk to, people that can make decisions on a state level, and aid in the efficiency of getting these projects done. So with that I'll conclude my testimony unless there's questions. [LB504]

SENATOR DUBAS: Senator Carlson. [LB504]

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February 27, 2009

SENATOR CARLSON: Senator Dubas. Senator Langemeier, do you know, on the letter that went to the President if there's been any response to that letter? [LB504]

SENATOR LANGEMEIER: Not to my knowledge, and just hold on a second. Not to my knowledge. [LB504]

SENATOR CARLSON: Okay. [LB504]

SENATOR DUBAS: Senator McCoy. [LB504]

SENATOR McCOY: Thank you, Senator Dubas. And thank you Senator Langemeier. I guess I have to have one quick question in the nature of what we're talking about. Do you know of any other states that have decided to go this route, better efficiency and handle this at the state level, and has that been an issue that's been discussed? Can we kind of take this out of the hands of this and do this a different way or I assume we can and that's part of the start of this discussion. [LB504]

SENATOR LANGEMEIER: Yeah. The state of New Jersey has done it and it seems to be working for them. And that's why I said in this bill, this is kind of the first step. If we truly want to proceed with this, and I think it should get some serious thought, is we have to do a step, the Governor has to do a step with him being the other executive branch of government with DEQ and his agency over there to make this complete. There's a few more steps we have to do, but this would be step one. [LB504]

SENATOR McCOY: Thank you. [LB504]

SENATOR DUBAS: Additional questions? [LB504]

SENATOR LANGEMEIER: I might add one comment. As this subject matter came up, I want to thank the Governor for...as we started to talk about this with the natural resources districts and Dean Edson, the director started talking about it, that's when the Department of Roads said we have problems, DEQ says we have problems, and I want to thank the Governor, did ask the general for the Corps of Engineers did come to Omaha and had a meeting with the agency heads and a number of people and I want to thank him for organizing that and recognizing that we have an issue, and then extending that letter on to the President, showing our thoughts and concerns. [LB504]

SENATOR DUBAS: Thank you. [LB504]

SENATOR LANGEMEIER: Thank you. [LB504]

SENATOR DUBAS: With that, that closes the hearing on LB504. [LB504]

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Disposition of Bills:

LB502 - Placed on General File.

LB504 - Held in committee.

Chairperson

Committee Clerk